IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.301 OF 2005

Rajesh Natwarlal Rawal ...Appellant

Vs.

Mira Bhayandar Municipal Corporation ...Respondent

CORAM: A.S.OKA,J.
DATE : MARCH 17, 2005.

P.C.:

. Not on board.

1. Heard Advocates for the parties. Shri Apte, leaned Counsel for the Respondent-Corporation states that if the Appellant appears before the Deputy Municipal Commissioner of the Respondent-Corporation on 29th March 2005 at 11.00 a.m. hearing will be given to the Appellant on notice dated 3rd November 2004 issued under Section 260 of the Bombay Provincial Municipal Corporations Act, 1949. He states that an order will be passed by the Deputy Municipal Commissioner within a period of four weeks from the date of conclusion of the hearing. He submits that if the Appellant maintains status quo in all respects in respect of the building in dispute and files an Affidavit in this Court along with photographs setting out the present stage of construction, till the order is passed by the Deputy Municipal Commissioner no action of demolition will be taken by the Respondent-Corporation.

2. Accepting the suggestion made by the learned Counsel for the Respondent, Shri Naik learned Counsel for the Appellant

states that in case any adverse order is passed by the Deputy Municipal Commissioner, the Appellant may be permitted to challenge the said order and for that purpose such adverse order should not be allowed to be implemented for the period of four weeks from the date of communication of the said order to the Appellant. He submits that in view of the statements made by the learned Counsel for the Respondent, he may be permitted to withdraw the said suit with liberty to file a fresh suit for raising the contentions which are raised in the present suit and for challenging the order which may be passed by the Respondent.

3. In view of the aforesaid submissions, I pass the following order :

i) The Appellant will appear before the Deputy Municipal Commissioner of the Respondent-Corporation on Tuesday 29th March 2005 at 11.00 a.m. The Deputy Municipal Commissioner will give hearing to the Appellant. After giving opportunity to the Appellant of being heard and after considering the reply filed by the Appellant to the notice dated 3rd November 2004 and after considering the documents, if any, produced by the Appellant, the Deputy Municipal Commissioner will pass an appropriate order within a period of four weeks from the date of conclusion of the hearing. It is obvious that the Deputy Municipal Commissioner will pass order without being influenced by the impugned Judgment and order. Till the order

is passed by the Respondent-Deputy Municipal Commissioner and in case the order is adverse to the Appellant for a period of four weeks from the date of communication of the said order to the Appellant, the action of demolition shall be not taken by the Respondent-Corporation.

ii) Within a period of one week from today the Appellant will file an Affidavit in this Court setting out the present stage of construction and nature of third party interests already created. The photographs showing present status of the construction shall be annexed to the Affidavit. Till the date of passing order and in case the order is adverse to the Appellant for a period of four weeks thereafter the Appellant is restrained from creating further third party interests in respect of building in question and from making any further construction and from inducting any third party in any part of the building which is already constructed.

iii) The Appellant is allowed to withdraw the Special Civil Suit No.16 of 2005 with liberty to file a fresh suit if occasion arises for challenging the order which may be passed by the Respondent-Corporation. It is made clear that it will be open for the Appellant to raise the same contentions which are raised in the present suit in the said suit which may be filed by him. The Trial Court will pass a formal order on the suit to that effect on production of authenticated copy of this order.

iv) All questions on merits are expressly kept open.

v) Appeal is disposed of in above terms.

JUDGE.